

REMARKS

Pursuant to 37 C.F.R. §1.116, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 1-22 are presently pending before the Office. No claims have been canceled. No new matter has been added. Support for the amendments can be found throughout the specification as originally filed. Applicant is not intending in any manner to narrow the scope of the originally filed claims.

The Examiner's Action mailed march 28, 2005 and the reference cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments appearing herein and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

Relying on 35 USC 112, second paragraph, the Examiner rejected claims 15, 20, and 22 as being indefinite. Applicant believes that the amendments herein clarify the limitation definitions to overcome this rejection. Accordingly, Applicant submits that the rejected claims, as amended, do define the legal metes and bounds of the invention. It is respectfully submitted that claims 15, 20 and 22 fully comply with 35 U.S.C. §112, second paragraph. Withdrawal of the rejection is respectfully requested.

Relying on 35 U.S.C. §102(b), the Examiner has rejected the subject matter of claims 1-20 and 22 as being anticipated by JP '440. Applicant respectfully traverses the rejection and requests reconsideration.

Applicant respectfully submits that it is important to note that, historically, the Office and the Federal Circuit has required that for a §102 anticipation, a single reference must teach (i.e., identically describe) each and every element of the rejected claim. The Office has steadfastly and properly maintained that view.

The Examiner essentially states that the '440 reference teaches extracting the buckwheat up to a temperature of 60 °C. However, the translation of the reference is somewhat confusing

and applicant submits it must be read in its overall context. The disclosure discusses, from its beginning, food grade, meals, etc., and specifically addresses itself to a flour mixture preparation.

Flour is defined as a powdery meal obtained by milling wheat and other cereal grains or dry food products. JP'440 then discusses mixing the buckwheat flour and water under certain conditions where a buckwheat flour origin is separated into a solution layer. No where does the disclosure discuss preparing an extract from the buckwheat seed itself. Preparing a food-grade buckwheat flour mixture of water at temperature from room to 60 degrees centigrade to obtain a separated layer is certainly different from preparing an aqueous extract of the buckwheat seed.

In addition, it is clear that no preparation of at temperature in excess of 61 degrees centigrade is disclosed.

One can not assume from the disclosure that polymers having the same characteristics of the present invention is produced by the '440 reference as the disclosure is working from a food-grade buckwheat flour. Further, there is no mention of a "fractionation product of an aqueous extract of a buckwheat seed." Further, there is no molecular weight discussion from which to make a determination that the inventions are the same. Applicant submits that the Examiner is speculating based on an erroneous assumption that the components of the present invention are the same as the flour and water mixture of the reference.

Accordingly, each and every element of Applicant's claims have not been taught in that single reference. In other words, the rejected claims do not read literally on any single item of prior art because the cited reference does not teach, disclose or suggest the present invention as claimed. Accordingly, Applicant respectfully submits that claims 1-20 and claim 22, have not been anticipated by the '440 reference under 35 U.S.C. §102(b), and respectfully requests that such rejection be withdrawn.

Applicant thanks the Examiner for allowing claim 21.

CONCLUSION

Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language.

A Notice of Allowance is earnestly solicited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 943-9300 would be appreciated.

Very respectfully,

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